SUPREME COURT OF THE UNITED STATES

October Term, 1955

No. 116

EDGAR B. STERN et al.
Petitioners

versus

THE BOARD OF LEVEE COMMISSIONERS OF THE ORLEANS LEVEE DISTRICT et al.
Respondents

PETITIONERS' BRIEF IN REPLY TO THE OPPOSITION OF RESPONDENT THE BOARD OF LEVEE COMMISSIONERS OF THE ORLEANS LEVEE DISTRICT

ARGUMENT

Respondent Levee Board's opposition rests on three grounds, discussed *seriatim* hereunder.

I

This case involves the validity, under the Contracts Clause of the United States Constitution, of an amendment to the Louisiana Constitution which reduces to 3½

mills the taxing power of respondent Levee Board, a bond-issuing state agency.

In violation of this amendment to the Louisiana Constitution, the Board adopted a resolution fixing its tax rate for 1955 at 5 mills, the allowable rate before the amendment.

It is twice stated in the Board's opposition (pages 5 and 12) that this resolution has been rescinded and that no taxes will be collected under it. The implication that the Board will levy no tax in excess of 3½ mills and that this cause is accordingly moot, is misleading.

By its later resolution of June 6, 1955, printed as Appendix F to the Board's opposition (page 23), the Board, while rescinding the 5-mill resolution, has merely reduced its 1955 tax rate from 5 to 4¼ mills. The rate is still in violation of the constitutional amendment at issue, which limits it to 3½ mills.

Even under the resolution of June 6, 1955, taxes aggregating more than $500,000 in excess of those allowed by the constitutional amendment at issue will be levied in 1955. Besides, the Levee Board can at any time further increase its tax rate for 1955.

It is accordingly evident that the cause is not moot; and that questions of substantial practical import to the people of New Orleans, and of substantial importance to the power of states generally to revise their tax structures, remain at issue.

II

The Levee Board's opposition points out that the Legislature of Louisiana has, in Act 138 of 1955, proposed a new amendment to the Louisiana Constitution. The proposed amendment is printed in Appendix E on page 21 of the Board's opposition.

In the first place, the proposed amendment is subject to adoption or rejection by the Louisiana electorate, who will not vote on it until 1956.

In the second place, since the proposed amendment is not retroactive, taxes levied by the Levee Board for 1955 will not be affected even should it be adopted at the polls.

Finally, insofar as the proposed amendment seeks to reduce the Levee Board's taxing powers, it will be subject to attack by the Board's antecedent contract creditors on the same constitutional grounds that have been sustained in this case by the Supreme Court of Louisiana.

It is evident that the proposal of the new amendment does not render the issue here moot and in no wise derogates from the propriety of certiorari herein.

III

The Levee Board contends, on pages 9 and 10 of its opposition, that the decision of the Supreme Court of Louisiana is not a decision that the Board's taxing power

is constitutionally incapable of reduction, but only that the reduction at issue cannot constitutionally be made because "it was necessary for the Levee Board to make use of its residuary taxing power" of 5 mills (page 10). The implication that it was necessary for the Board to levy a 5-mill tax to meet its antecedent contract obligations, is unfounded.

As demonstrated in the petition for certiorari, the Board's revenues from a 3½-mill tax in 1955, together with its other revenues, would suffice not only to meet all of its pre-existing indebtedness maturing in that year, but would produce a surplus for other activities of $2,676,463.[1]

Claimed necessity for a 5-mill levy arises solely from the circumstance that this surplus falls short of the Levee Board's projected expenditures for new construction in 1955, for which contracts had not been let when the constitutional amendment at issue became effective.[2] But the federal Contracts Clause protects the taxing power of a state agency only to the extent of its antecedent contract obligations. It has never been contended that the power of an agency to contract new indebtedness for future operations is guaranteed by the federal Constiution against restriction by popular mandate.

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[1] Petition for certiorari: footnote 9 on page 7; footnote 13 on page 11; and Appendix D—the Levee Board's own budget for 1955—on pages 61-62.

[2] Thus, the Levee Board's opposition states, not that the reduction of its taxing power would leave it with insufficient income to meet its outstanding bonds and other antecedent indebtedness, but that a 3½-mill tax would not "leave it sufficient revenue *to meet its operating expenses and* to pay its bonded obligations" (page 6), *"to carry out its duties and* to pay its bonds" (pages 6-7), *"to operate and* to pay its bonded obligations" (page 7) (italics supplied).

The Supreme Court of Louisiana has not so held; nor has it held, nor could it have held in light of the Levee Board's budget, that the Board has need of a greater taxing power in 1955 than 3½-mills to pay its pre-existing debts.

The decision below is that the Contracts Clause of the United States Constitution forecloses reduction in any degree of the taxing power of a bond-issuing agency as long as any of its antecedent bonds are outstanding.[3]

CONCLUSION

Events supervening since the petition of certiorari was filed have neither reduced the scope nor diminished the fundamental and widespread importance of the issues presented by the petition.

The grave constitutional question of the effect of the Contracts Clause of the United States Constitution on the "baffling task" of the States to adapt their tax structures to insistent pressures for new revenues,[4] remains in controversy.

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[3] The expressed fundamental premise of the decision of the Supreme Court of Louisiana is that under the federal Contracts Clause, the Levee Board's outstanding bonds may not "be diminished by curtailing the taxing power of the board" in any degree, "as long as these bonds are outstanding and unpaid". And the acknowledged purpose of the holding below as to construction of the Louisiana constitutional amendment at issue is to give "the amendment a constitutional effect rather than to annul it."

[4] See *Wisconsin vs J. C. Penney Co.*, 311 US 435, 442 (1940).

Allowance of certiorari is again respectfully prayed.

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